

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Claire M. Mosley)
Dist. B01, Block 57O, Parcel F00004) Shelby County
Residential Property)
Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$15,200	\$98,300	\$113,500	\$28,375

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on February 27, 2007 in Memphis, Tennessee. In attendance at the hearing were Claire M. Mosley, the appellant, and Shelby County Property Assessor's representative Jonathan Jackson.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a condominium unit located at 3282 Neil Drive in Bartlett, Tennessee. The taxpayer purchased subject property in 1998 for \$93,000.

The taxpayer contended that subject property should be valued at \$100,000. In support of this position, Ms. Mosley testified that her unit is located in the first building constructed in subject development. Ms. Mosley maintained subject property experiences a loss in value due to a variety of problems related to poor construction. Those problems include faucets that freeze, power surges, a dryer exhaust located in the slab directly behind the air conditioning unit, termites and ants.

The taxpayer introduced the sale of the adjoining condominium (3280 Neil Drive) in August of 2005 for \$100,500 in support of her contention of value. According to Ms. Mosley, the comparable was on the market for almost one year before it sold and has 233 square feet more than her unit.

The assessor contended that subject property should remain valued at \$113,500. In support of this position, a spreadsheet summarizing three comparable sales was introduced into evidence. Mr. Jackson maintained that the comparables would normally support a value indication of \$131,000 for the subject property. Mr. Jackson asserted that any loss in value due to the problems summarized by Ms. Mosley has been accounted for by appraising subject property at only \$113,500.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$113,500 absent additional evidence from the taxpayer.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds merely reciting factors that could cause a diminution in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

The taxpayer also claimed that the land value set by the assessing authorities. . . was too high. In support of that position, she claimed that. . . the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

Respectfully, the administrative judge finds that Ms. Mosley offered no evidence concerning the cost to cure the various problems she maintained cause a diminution in value. Indeed, Ms. Mosley stated at the hearing that she was “unsure how it all affects value.” Similarly, Ms. Mosley wrote in the last paragraph in the attachment to her appeal form that “I have no idea [what] the dollar amount would be to correct the problems.”

The administrative judge finds that the single sale introduced by Ms. Mosley cannot provide a basis of valuation for at least two reasons. First, the sale occurred after the relevant assessment date of January 1, 2005 and is technically irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that “[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events.” Final Decision and Order at 3. Second, one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

The administrative judge finds Ms. Mosley testified that the owner of the unit located at 3280 Neil Drive had died and the owner’s brother sold the unit after it had been listed with a realtor. Thus, it appears the sale may have involved an element of duress. Moreover, the administrative judge finds that the sales introduced by Mr. Jackson seemingly support a market value indication far above \$100,000 even after adjusting for differences in quality, size, etc.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$15,200	\$98,300	\$113,500	\$28,375

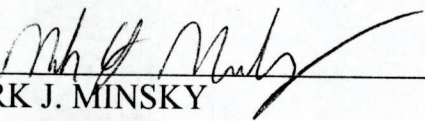
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 7th day of March, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Claire M. Mosley
Tameaka Stanton-Riley, Appeals Manager